

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Unbundled Access to Network Elements)	WC Docket No. 04-313
)	
Review of the Section 251 Unbundling)	CC Docket No. 01-338
Obligations of Incumbent Local Exchange)	
Carriers)	
)	

PETITION FOR RECONSIDERATION

McLeodUSA Telecommunications Services, Inc. (“McLeodUSA”), through its undersigned counsel and pursuant to Section 1.429 of the Federal Communications Commission’s (“Commission”) Rules,¹ hereby petitions for reconsideration of the decision in the Commission’s October 18, 2004 *Order*² that fiber-to-the-curb (“FTTC”) loops are subject to the same unbundling framework that was established for fiber-to-the-home (“FTTH”) in the *Triennial Review Order*. McLeodUSA also requests that the Commission rescind the determinations in the *Order* concerning ILEC obligations to install TDM capability.

I. The Commission Should Reconsider its FTTC Unbundling Framework

In the *Triennial Review Order*, the Commission granted complete unbundling relief for FTTH loops in new build situations, and in an overbuild situation, determined that incumbents must either provide unbundled access to a 64 kbps transmission path over the FTTH loop or

¹ 47 C.F.R. § 1.429.

² *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Order on Reconsideration, FCC 04-248 (2004) (“*Order*”).

unbundled access to a spare copper loop.³ In the *Order*, the Commission extended that framework to encompass FTTC loops.

The Commission should rescind its treatment of FTTC as FTTH, first, because the Commission wrongly decided that competitive carriers face similar barriers to deployment as incumbents.⁴ The Commission determined that entry barriers were comparable for FTTC and FTTH, but failed adequately to consider that in the case of greenfield FTTC deployments, competitive carriers are not usually merely extending an existing network. In the case of brownfield FTTC deployments, the Commission erred in finding little impairment by merely stating that competitive carriers and ILECs face the “same issues.”⁵ The Commission’s conclusion is utterly incorrect. Unlike the incumbent LECs, competitive carriers are not able to utilize existing infrastructure such as wire centers and remote terminals and do not already enjoy the right to install facilities in public rights-of-way. FTTC also presents significantly greater entry barriers for competitive carriers in the case of overbuilds because they are not able to utilize existing copper from the curb to the customer premises. The Commission’s statement in the *Order* that incumbents “are not necessarily able to re-use existing copper loops due to different network design associated with FTTC loops”⁶ is hardly a finding that incumbents do not in fact re-use copper in the last 500 feet and therefore enjoy a very large advantage over competitive carriers in installing FTTC. More importantly, the Commission’s statement is

³ *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced Telecommunications Capability, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking*, 18 FCC Rcd 16978, ¶ 275-77 (2003) (“*Triennial Review Order*”).

⁴ *Order*, para. 12.

⁵ *Id.*

⁶ *Order*, n. 46.

wholly at odds with the reality competitive LECs face in the market. When McLeodUSA constructed a “fiber to the home” network in parts of Cedar Rapids, Iowa as a market trial, it was forced to install both coax and copper plant to each premise from the fiber drop because end user requires the use of a copper connection for most of their current customer premise equipment. The majority of consumers have yet to convert their CPE to non-copper-based connectivity, and that will be true for the medium to long term. For the most part in the *Order*, the Commission merely referred to its earlier findings in the *Triennial Review Order* without adequately considering differences between FTTH and FTTC and the greater ability of incumbents to utilize the existing network. The Commission’s finding that competitive carriers would experience little impairment in deploying FTTC was arbitrary and unsupported by any serious record evidence.

The Commission also erred in determining that unbundling relief would reduce disincentives to invest in FTTC.⁷ BellSouth was, and is, already deploying FTTC even in the absence of unbundling relief. BellSouth has deployed FTTC loops, and more than one million of its loops may qualify under the Commission’s definition.⁸ The fact that BellSouth has been already significantly investing in FTTC is a significant factual difference than with respect to FTTH considered in the *Triennial Review Order*. In the *Triennial Review Order*, there was no evidence of major carriers that were already significantly deploying FTTH and such evidence as there was of any FTTH deployment was minimal and debatable at best.⁹ Therefore, it was arbitrary for the Commission to conclude that extending unbundling relief to FTTC loops would have any impact on incentives to invest. There was also no basis for the Commission to apply

⁷ *Order*, para. 13.

⁸ See *Opposition of AT&T Corp. to BellSouth Petition for Reconsideration*, at 9 (filed Nov. 6, 2003).

⁹ *Triennial Review Order*, paras. 219 and 227.

unbundling relief to existing FTTC insofar as the purpose of unbundling relief was to stimulate new investment.

Accordingly, the Commission should reconsider its decision to apply the FTTH unbundling framework to FTTC loops. The Commission should reclassify FTTC as hybrid loops.

II. The Commission Should Reconsider Its Determination Concerning TDM Capability

The Commission should rescind its decision that incumbents are not required to add TDM capabilities into new packetized transmission facilities or into existing ones that never had TDM capability.¹⁰ This obligation is unclear because it does not adequately define “networks.” Because unbundling obligations apply to specific network elements, the Commission must define ILEC obligations concerning TDM in relation to network elements, not merely “networks.” McLeodUSA is concerned that incumbents will deny or restrict unbundled access to specific network elements based on vague and generalized contentions that they are installing, or have installed, packetized networks. The Commission should also reiterate that ILECs must continue to provide unbundled access to network elements to serve enterprise customers regardless of technology¹¹ and that an incumbent may not “engineer the transmission capabilities of its network in a manner” that would “disrupt or degrade access to” the TDM capabilities of hybrid loops.¹²

¹⁰ *Order*, para. 20.

¹¹ “DS1 loops will be available to requesting carriers, without limitation, regardless of the technology used to provide such loops, e.g. two-wire and four-wire HDSL or SHDSL, fiber optics, or radio, used by the incumbent LEC to provision such loops and regardless of the customer for which the requesting carrier will serve unless otherwise specifically indicated. ... The unbundling obligation associated with DS1 loops is in no way limited by the rules we adopt today with respect to hybrid loops typically used to serve mass market customers.” *Triennial Review Order*, para. 956.

¹² *Triennial Review Order*, para. ¶ 294.

The Commission should also reconsider its decision that ILECs are not required to provide access to packet networks even when the ILEC performs a “format translation” “usually at the customer premise” in order to assure proper functioning of customer premises equipment *Id.* at ¶ 21. ILECs will seek to exploit this hand-off exception by performing the TDM conversion at points deep within the packet network. Nothing in the *Order* would prevent ILECs from performing the TDM conversion either at the central office or at intermediate nodes in the loop. Nor is it feasible for the Commission to establish a rule that would reasonably supervise where in the network ILECs could perform this conversion while preserving the intent that they must provide unbundled access to TDM capability but not packet switched capability. Accordingly, the Commission on reconsideration should determine that ILECs must provide unbundled access to loops whenever there is a TDM hand-off to customers.

III. CONCLUSION

For the foregoing reasons, McLeod respectfully requests that Commission determine that FTTC loops are hybrid loops not subject to the same unbundling framework as FTTH and that the Commission rescind its determinations concerning TDM capability.

Respectfully submitted,

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